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**IN THE  
COURT OF APPEALS OF INDIANA**

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CHRYSTAL M. FINKLEA,

Appellant-Plaintiff,

vs.

DORA J. BENNETT,

Appellee-Defendant.

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No. 49A05-0511-CV-663

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Thomas J. Carroll, Judge  
The Honorable Christopher Haile, Commissioner  
Cause No. 49D06-0404-CT-772

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February 27, 2007

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Chrystal Finklea appeals the denial of her motion to correct error following a jury trial on damages from an automobile accident. Because the jury was presented with conflicting evidence regarding damages, the trial court did not abuse its discretion in denying the motion to correct error. Accordingly, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

On the morning of March 6, 2003, Dora Bennett failed to stop at a red light and her vehicle struck Finklea's vehicle. After the accident, Finklea appeared dazed but declined to be taken to the hospital. She had a friend take her home. She took some prescription pain medication and slept for a few hours. That evening, she went to the emergency room complaining of nausea, headache, and pain in the left side of her neck. A doctor determined she had suffered a concussion and neck strain, and prescribed pain medication. Finklea visited her own doctor on March 10 and March 20 because of continuing pain in the left side of her neck. She missed work for about a week after the accident.

Finklea began physical therapy on April 1, 2003. Physical therapy was discontinued in May 2003 when her symptoms did not significantly improve. Dr. John Steenbergen became her primary physician in June 2003. A cervical MRI in July 2003 revealed "degenerative changes" in her neck in the form of arthritis, bone spurs, and disc bulges. (Ex. Vol. 1 at 160.)

In February 2004, Finklea was involved in a minor traffic accident. She was treated at the emergency room for pain in the right side of her neck. She required no other treatment for this neck pain.

In March 2004, Finklea sued Bennett and sought damages for medical expenses, lost wages, pain and suffering, and emotional distress.<sup>1</sup> In April 2004, Finklea's doctor restricted her activities because she continued to report pain in the left side of her neck. Shortly before the jury trial in August 2005, Bennett admitted fault for the accident. Finklea requested \$4,952.75 in medical expenses and \$1,810.74 in lost wages, as well as damages for pain and suffering, and "past inability to function as a whole person." (Appellant's Br. at 9.) Videotaped depositions of Dr. Steenbergen and Dr. Gust Spenos were played for the jury. Dr. Spenos had examined Finklea and reviewed her medical records at Bennett's request.

The jury awarded Finklea unspecified damages of \$3,488.44. In a motion to correct error, Finklea argued the jury verdict was inadequate. The trial court denied her motion.

### **DISCUSSION AND DECISION**

A decision to deny a motion to correct error is reviewed for an abuse of discretion. *MAPCO Coal Inc. v. Godwin*, 786 N.E.2d 769, 778 (Ind. Ct. App. 2003). An abuse of discretion occurs when the trial court's action is against the logic and effect of the facts and circumstances and the inferences that may be drawn therefrom. *Id.* To determine whether the trial court abused its discretion by denying Finklea's motion to correct error,

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<sup>1</sup> Finklea's answer to Interrogatory No. 6 states the following injuries resulted from the accident: "Headaches, nausea, head, neck, shoulder and back pain, numbness in left arm to hand, right knee pain, and muscle spasms in back." (Ex. Vol. 1 at 117.)

we must decide whether the jury's damage award was inadequate and outside the scope of the evidence. *Id.*

In doing so, we do not reweigh the evidence or judge the credibility of the witnesses, and we consider only the evidence favorable to the award. *Id.* We may not substitute our idea of a proper award for that of the jury. *Id.* We will not reverse a damage award so long as the damages are within the scope of the evidence. *Id.* A verdict will be reversed only if the amount of damages awarded indicates the jury was motivated by prejudice, passion, partiality, corruption or consideration of some improper element. *Id.* We will not deem a verdict to be the result of improper considerations unless it cannot be explained on any other reasonable grounds. *Id.* When the evidence presented is conflicting as to the nature, extent, and source of the injury, the jury is in the best position to assess damages. *Faulk v. Chandler*, 408 N.E.2d 584, 586 (Ind. Ct. App. 1980).

1. Medical Expenses

Finklea argues the trial court should have granted her motion to correct error because the jury awarded damages in an amount less than her “undisputed medical expenses.” (Appellant’s Br. at 7.)

Dr. Steenbergen testified the medical expenses listed in Exhibit 6 were reasonable, necessary, and “rendered in response to the injuries [Finklea] sustained in March 2003.” (Steenbergen Dep. at 32.) Because Dr. Steenbergen had treated Finklea for complaints in addition to the pain in the left side of her neck, the medical expenses listed on the exhibit

were reduced from \$5,139.75 to \$4,952.75.<sup>2</sup> The medical expenses included office visits, physical therapy, an emergency room visit, prescriptions and equipment, an MRI, and an EMG.

Bennett challenged whether all of Finklea's complaints were the result of the accident. Physical therapy notes from 2003 indicated Finklea had increased pain after taking out the garbage before her April 3 appointment, after trimming shrubs on April 16, and after working with her arms over her head for twenty minutes on May 9. A cervical MRI in July 2003 revealed degenerative changes, including arthritis, bone spurs, and disc bulges. Dr. Spenos testified arthritis or bone spurs alone could cause Finklea's neck pain and that many people believe bulging discs also cause neck pain.

In April 2004, Dr. Steenbergen determined Finklea's "findings and symptoms are consistent with a whole body impairment of 5% and a 15% impairment of her cervical spine function."<sup>3</sup> (Ex. Vol. 1 at 37.) Bennett challenged Dr. Steenbergen's impairment rating and asked him to reproduce his calculations during his videotaped deposition. Dr. Spenos testified no objective evidence supported Dr. Steenbergen's impairment rating and he would not assign Finklea any impairment rating.

Bennett also questioned Finklea's veracity and candor. For example, in her pre-trial deposition, Finklea stated she had not "had problems with headaches before the accident" in 2003. (Ex. Vol. 1 at 97.) Her medical records indicated she had complained

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<sup>2</sup> Dr. Steenbergen testified about half of each office visit was spent on issues other than Finklea's neck pain. Accordingly, the charges for each office visit with Dr. Steenbergen were halved.

<sup>3</sup> After being contacted by Bennett's attorney prior to trial, Dr. Steenbergen revised his impairment rating, indicating half of the impairment was due to the accident and half to pre-existing degenerative changes.

of severe headaches in 1996, 1998, and 1999, and had on one occasion sought treatment at an emergency room. At trial, she explained the headaches were not “a problem because they were years before.” (Tr. at 33.) Similarly, Finklea stated she did not “have any problems with numbness” in her arms before the accident. (Ex. Vol. 1 at 106.) Her medical records indicated she had numbness and pain in her hands and wrists, due to carpal tunnel syndrome, in 1997 and 2002. At trial, Finklea explained, “I had not had any problems with [numbness] in that year or that month or any time recent, I didn’t have any numbness going on. Like I said, it was some years before, so I didn’t even consider it a problem.” (Tr. at 33.)

Finklea’s answer to Interrogatory No. 9 states in part: “I have constant pain down the back of my neck and between the shoulder blades. It’s basically a dull, low-keyed pain until I perform some normal act that aggravates it[.]” (Ex. Vol. 1 at 119.) During her first physical therapy session, she indicated her symptoms, including a burning pain in the left side of her neck, were intermittent. At trial, she explained the difference in her answers by saying: “When the pain comes, it’s there, it’s constant. It can last a couple of weeks, it can last a month. It’s there. When it eases up, that is what I call intermittent if it comes back again, but when it comes it, it comes and stays.” (Tr. at 36.)

The foregoing evidence permitted the jury to infer some or all of Finklea’s medical expenses were not proximately caused by the accident. The jury was required to resolve the conflicts in the evidence and determine the damages to which Finklea is entitled. The award was within the scope of the evidence. The trial court did not abuse its discretion in denying Finklea’s motion to correct error.

## 2. Lost Time

Finklea argues because the jury awarded inadequate damages she is entitled to damages for her lost time:

An injured plaintiff may recover damages for the time lost prior to trial because of her injury. It is the time, which belonged to the Plaintiff and which Plaintiff's injury has deprived her of, that is compensable. Loss of earnings is an appropriate element to consider in determining the value of loss of time. *Rieth-Riley Constr. Co., Inc. v. McCarrell*, 163 Ind. App. 613, 325 N.E.2d 844 (1975).

(Appellant's Br. at 8.) Exhibit 8 details the number of hours Finklea spent at the doctor's office, in physical therapy, or staying at home due to pain. She requested damages for lost time of \$1,810.74.<sup>4</sup>

A comparison of the dates on Exhibit 8 with the dates listed in Exhibit 6 (medical expenses) and in Exhibit 3 (physical therapy notes) reveals discrepancies among the number and dates of physical therapy sessions. For example, Exhibit 8 lists eighteen physical therapy appointments, Exhibit 6 includes twelve dates for physical therapy, and Exhibit 3 indicates Finklea had fourteen physical therapy sessions with one cancellation. Two sessions for which there are physical therapy notes are not among the medical expenses, two sessions appear only on the time summary, one session was cancelled due to sickness, and one was cancelled due to a doctor's appointment. In addition, Finklea claimed one hour for physical therapy and three hours for a doctor's appointment on May

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<sup>4</sup> This amount was calculated by multiplying the total number of hours (103) by Finklea's hourly wage (\$17.58/hour).

19, 2003. The medical expenses for that day include only an office visit and the physical therapy notes indicate “Pt called to cx. seeing Dr. Arthur today.”<sup>5</sup> (Ex. Vol. 1 at 32.)

Because the jury was in the best position to resolve the inconsistencies and discrepancies in Exhibits 3, 6, and 8, and to determine Finklea’s entitlement, if any, to damages for lost time, we will not disturb the jury’s award. The trial court did not err in denying Finklea’s motion to correct error.

### 3. Pain and Suffering

Finklea argues the jury awarded either no damages or inadequate damages for her pain and suffering.

The jury is afforded a great deal of discretion in assessing damage awards. *Allstate Ins. Co. v. Hennings*, 827 N.E.2d 1244, 1252 (Ind. Ct. App. 2005). The jury may award damages for pain and suffering. *Id.* When the evidence presented is conflicting as to the nature, extent, and source of the injury, the jury is in the best position to assess damages. *Faulk*, 408 N.E.2d at 586.

The jury was faced with conflicting evidence regarding the nature and severity of Finklea’s pain. Finklea testified she did not have pain in the left side of her neck until after the accident. After the accident, she described the pain in the left side of her neck as both constant and intermittent. Finklea’s answer to Interrogatory No. 9 states in part: “I have constant pain down the back of my neck and between the shoulder blades. It’s basically a dull, low-keyed pain until I perform some normal act that aggravates it[.]”

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<sup>5</sup> Dr. Arthur was Finklea’s treating physician at the time.



(Ex. Vol. 1 at 119.) During her first physical therapy session, she indicated her symptoms, including a burning pain in the left side of her neck, were intermittent. Shortly before trial, she amended her answer to Interrogatory No. 9 to read: “When I have pain, it is constant, down the back of my neck and between the shoulder blades.” (Ex. Vol. 1 at 167.) At trial, she explained the difference in her answers by saying: “When the pain comes, it’s there, it’s constant. It can last a couple of weeks, it can last a month. It’s there. When it eases up, that is what I call intermittent if it comes back again, but when it comes it, it comes and stays.” (Tr. at 36.) Because the jury is in the best position to resolve such conflicts in the evidence and assess damages accordingly, the trial court did not err in denying Finklea’s motion to correct error.

#### 4. Inability to Function as a Whole Person

Finklea argues the jury awarded either no damages or inadequate damages for her “past inability to function as a whole person.” (Appellant’s Br. at 9.)

When awarding damages, the jury may consider “the nature and extent of the plaintiff’s injury, and the effect of the injury itself on the plaintiff’s ability to function as a whole person.” *Canfield v. Sandock*, 563 N.E.2d 1279, 1282 (Ind. 1990), *reh’g denied*. This “impact of an injury on one’s activities over time” relates more to the permanency of the injury than to pain and suffering in a traditional sense. *Id.* Accordingly, the jury must resolve conflicts in the evidence regarding whether Finklea will recover and be able to participate in the activities she enjoyed before the accident.

Finklea testified she is a licensed minister, and her ministry and church activities are “a very important part” of her life. (Tr. at 49.) Since the accident, she is no longer

allowed to perform adult immersion baptisms because she “might drop” the person. (*Id.*) She can no longer “dance and cla[p her] hands and thro[w her] hands up [and] fully get into the spirit of things,” (*id.* at 50), during services without experiencing pain. She also ceased videotaping services because she is no longer able to carry her video equipment. She can no longer plant flowers, garden, paint, or apply wallpaper without pain, activities she had previously enjoyed.

In April 2004, Dr. Steenbergen restricted Finklea’s activities because Finklea experienced increased pain after doing certain household activities. The restrictions “for the foreseeable future” include not working above her shoulders or below her knees. (Steenbergen Dep. at 35.) Bennett challenged the permanency of Finklea’s injury. Dr. Spenos testified he would not give Finklea a permanent impairment rating because she would “get better.” (Spenos Dep. at 61.)<sup>6</sup> He also stated the “expectation is she will fully recover.” (*Id.* at 97.)

Because the jury is in the best position to resolve such conflicts in the evidence and assess damages accordingly, the trial court did not abuse its discretion in denying Finklea’s motion to correct error.

## **CONCLUSION**

The jury was in the best position to resolve conflicts in the evidence regarding medical expenses, lost time, pain and suffering, and inability to function as a whole

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<sup>6</sup> The unredacted transcript of Dr. Spenos’ videotaped deposition appears as Volume II of the exhibits.

person, and to assess damages appropriately. The trial court did not err in denying Finklea's motion to correct error. Accordingly, we affirm.

Affirmed.

BAILEY, J., and RILEY, J., concur.